

2009 DRAFTING REQUEST

Bill

Received: **01/12/2009**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Lillethun**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Business - credits**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Lillethun, BB0346 -

Topic:

Historic rehabilitation tax credits

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 01/12/2009	nnatzke 01/12/2009		_____			S&L
/1			phenry 01/13/2009	_____	cduerst 01/13/2009		S&L
/2	jkreye 01/15/2009	nnatzke 01/15/2009	phenry 01/15/2009	_____	lparisi 01/15/2009		S&L
/3	jkreye 02/02/2009	nnatzke 02/02/2009	mduchek 02/02/2009	_____	cduerst 02/02/2009		S&L
	jkreye 02/02/2009	nnatzke 02/02/2009		_____			

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/4	jkreye 02/03/2009	kfollett 02/03/2009	mduchek 02/02/2009		lparisi 02/02/2009		S&L
/5			mduchek 02/03/2009		sbasford 02/03/2009		

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/?	jkreye	1 ^{run} 1/12	1/13 ph	1/13 ph/13			

FE Sent For:

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13 2/2
M

Kreye, Joseph

From: Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]
Sent: Monday, January 12, 2009 1:48 PM
To: Kreye, Joseph
Cc: Grinde, Kirsten - DOA; Beadles, Kathleen - DOA
Subject: FW: DOA Draft Request - LRB-0033/2 Historic Rehabilitation Tax Credits
Attachments: 09-05741.pdf

Joe,

With apologies, I thought this request had already been made by me. We're intending to include the historic preservation tax credit proposal as part of the governor's executive budget and I'm forwarding to you this as a request for an updated draft. I believe the below will provide you the necessary guidance on the language.

Let me know if you have any questions.

-Chad

From: Templeton, Carrie E - DOR
Sent: Tuesday, January 06, 2009 11:26 AM
To: Grinde, Kirsten - DOA; Lillethun, Chad W - DOA; Casper, Tim - GOV; Kanninen, Dan - GOV
Subject: FW: Co-Sponsorship of LRB 0574/1 / LRB-0033/2 Historic Rehabilitation Tax Credits

Fyi—This is the bill the Governor met with Gary Gorman about (Alice O'Connor client)
 C

Carrie Templeton
Wisconsin Department of Revenue
(608) 266-6466
carrie.templeton@revenue.wi.gov

****Important Confidentiality Notice****

This email, and any files transmitted with it, are from the Wisconsin Department of Revenue and contain information that may be confidential or legally privileged. Unless the email or attached file(s) state otherwise, this information is intended only for the use of the individual or entity to which it is addressed. If you are not the intended recipient: You are notified that reading, copying, disclosing, or distributing this email and any attached file(s), or taking any action based on the information contained in them is strictly prohibited. This email and any attached files must be deleted. Please email the sender to notify us that the information was sent to you in error.

From: Sen.Lassa
Sent: Tuesday, January 06, 2009 10:25 AM
To: *Legislative Assembly Democrats; *Legislative Assembly Republicans; *Legislative Assembly - Independents; *Legislative Senate - Independents; *Legislative Senate Democrats; *Legislative Senate Republicans
Subject: Co-Sponsorship of LRB 0574/1 / LRB-0033/2 Historic Rehabilitation Tax Credits

TO: All Legislators

FROM: Senator Julie Lassa
 Representative Jennifer Shilling

DATE: January 6, 2009

RE: Co-Sponsorship of LRB 0574/1 / LRB-0033/2

RE: Historic Rehabilitation Tax Credits

DEADLINE: Thursday, January 15

LRB 0574/1 and its Assembly companion bill LRB 033/2 propose to change state tax credit law in order to capture potential investors' dollars for historic preservation projects. They are virtually identical to 2007 bill SB 447 as amended, which unanimously passed the Senate Economic Development Committee; its companion bill AB 762 also passed the

01/12/2009

Assembly Ways and Means Committee unanimously.

Historic renovation projects are more financially feasible for developers because there are federal and state tax credits that help attract investor capital to those projects. In many states, an investor who utilizes the state credit is different from the investor who uses the federal tax credit. This gives developers the chance to attract different investors who like to maximize credits as well as a larger pool of possible investors which Wisconsin needs to make historical preservation projects financially successful.

Current Wisconsin law says that both the federal and Wisconsin credit must be used by the same investor. Any investor who wishes to only use the state tax credit or the federal tax credit can't participate as a potential investor in Wisconsin. As a result, the state tax credit is often worth nothing to large investors that are interested in federal tax credits but are not Wisconsin taxpayers. This makes historic renovation projects financially infeasible without these larger out-of-state investors.

Our bill simply allows separate investors to utilize either the state or federal tax credits and removes the current requirement that one investor alone must use both credits. This change, supported by the Wisconsin Department of Revenue, State Historical Society and WHEDA, would allow the Wisconsin historic tax credit to be allocated to an investor that can use it pursuant to the partnership agreement or LLC operating agreement. This bill will help generate viable revenue streams for properties that are now standing empty, dilapidated, or underused. Unless we change our current policy, Wisconsin will continue to send potential investors to friendlier business climates.

The fiscal estimate prepared in 2008 indicated that, while the overall impact is unknown, it is likely to be minimal and any increased state government costs could be absorbed within existing agency budgets.

If you are interested in co-sponsoring LRB 0574/1 and LRB 0033/2, please contact Mark Knickelbine in Senator Lassa's office at **6-3123** or Nathan Houdek in Rep. Shilling's office at **6-5780** no later than **Thursday, January 15**. Unless you specify otherwise, you will be signed to both bills.

2009 BILL

1 AN ACT *to amend* 44.02 (24), 71.07 (9m) (c), 71.07 (9m) (f), 71.28 (6) (c), 71.28 (6)
 2 (f), 71.47 (6) (c) and 71.47 (6) (f); and *to create* 71.07 (9m) (cm), 71.07 (9m) (g),
 3 71.28 (6) (cm), 71.28 (6) (g), 71.47 (6) (cm) and 71.47 (6) (g) of the statutes;
 4 *relating to:* ~~the income and franchise tax credit that supplements the federal~~
 5 ~~historic rehabilitation tax credit.~~ *the budget*

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anal: title: sub
Analysis by the Legislative Reference Bureau

Under current law, a person who owns an income-producing historic building may claim a federal income tax credit that is equal to 20 percent of certain costs to rehabilitate the historic building. To claim the credit, the building must be listed, or be eligible for listing, on the national register of historic places or located in certain national, state, or local historic districts, and the rehabilitation work must comply with standards established by the secretary of the interior.

Under current law, a person who may claim the federal income tax credit for rehabilitating an income-producing historic building may also claim a state income tax or franchise tax credit that is equal to 5 percent of certain costs to rehabilitate the historic building. To claim the credit, the person must include with the person's tax return evidence that the secretary of the interior approved the rehabilitation work before the rehabilitation work began.

Under this bill, a person may claim the state income and franchise tax credit for rehabilitating an income-producing historic building if the person includes with the person's tax return evidence that the state historic preservation officer

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DOA Budget
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TAXATION
INCOME TAXATION

BILL

recommended the rehabilitation work for approval by the secretary of the interior before the rehabilitation work began and that the rehabilitation was approved by the secretary of the interior.

Under current law, each partner in a partnership or member of a limited liability company is allocated a portion of any tax credit that the partnership or limited liability company may claim, including the credit for rehabilitating a historic building, based on each partner's or member's ownership interest. Under this bill, a partner or member is allocated a portion of the tax credit for rehabilitating a historic building in a manner specified in an agreement with the other partners or members.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 44.02 (24) of the statutes is amended to read:

2 44.02 (24) Promulgate by rule procedures, standards and forms necessary to
3 certify, and shall certify, expenditures for preservation or rehabilitation of historic
4 property for the purposes of s. ss. 71.07 (9m) and (9r), 71.28 (6), and 71.47 (6). These
5 standards shall be substantially similar to the standards used by the secretary of the
6 interior to certify rehabilitations under 26 USC 47 (c) (2).

7 **SECTION 2.** 71.07 (9m) (c) of the statutes is amended to read:

8 71.07 (9m) (c) No person may claim the credit under this subsection unless the
9 claimant includes with the claimant's return evidence that the rehabilitation was
10 approved recommended by the state historic preservation officer for approval by the
11 secretary of the interior under 36 CFR 67.6 before the physical work of construction,
12 or destruction in preparation for construction, began and that the rehabilitation was
13 approved by the secretary of the interior under 36 CFR 67.6.

14 **SECTION 3.** 71.07 (9m) (cm) of the statutes is created to read:

BILL

1 71.07 (9m) (cm) Any credit claimed under this subsection for Wisconsin
2 purposes shall be claimed at the same time as for federal purposes.

3 **SECTION 4.** 71.07 (9m) (f) of the statutes is amended to read:

4 71.07 (9m) (f) A partnership, limited liability company, or tax-option
5 corporation may not claim the credit under this subsection. The individual partners
6 of a partnership, members ~~in~~ of a limited liability company, or shareholders in a
7 tax-option corporation may claim the credit under this subsection based on eligible
8 costs incurred by the partnership, company, or tax-option corporation, ~~in proportion~~
9 ~~to the ownership interest of each partner, member or shareholder.~~ The partnership,
10 limited liability company, or tax-option corporation shall calculate the amount of the
11 credit which may be claimed by each partner, member, or shareholder and shall
12 provide that information to the partner, member, or shareholder. For shareholders
13 of a tax-option corporation, the credit may be allocated in proportion to the
14 ownership interest of each shareholder. Credits computed by a partnership or
15 limited liability company shall be allocated to partners or members as provided in
16 a written agreement among the partners or members that is entered into no later
17 than the last day of the taxable year of the partnership or limited liability company,
18 for which the credit is claimed. Any partner or member who claims the credit as
19 provided under this paragraph, for which the credit is claimed shall attach a copy of
20 the agreement to the tax return on which the credit is claimed. A person claiming
21 the credit as provided under this paragraph is solely responsible for any tax liability
22 arising from a dispute with the department of revenue related to claiming the credit.

23 **SECTION 5.** 71.07 (9m) (g) of the statutes is created to read:

24 71.07 (9m) (g) 1. If a person who claims the credit under this subsection elects
25 to claim the credit based on claiming amounts for expenditures as the expenditures

BILL**SECTION 5**

1 are paid, rather than when the rehabilitation work is completed, the person shall file
2 an election form with the department, in the manner prescribed by the department.

3 2. Notwithstanding s. 71.77, the department may adjust or disallow the credit
4 claimed under this subsection within 4 years after the date that the state historical
5 society notifies the department that the expenditures for which the credit was
6 claimed do not comply with the standards for certification promulgated under s.
7 44.02 (24).

8 **SECTION 6.** 71.28 (6) (c) of the statutes is amended to read:

9 71.28 (6) (c) No person may claim the credit under this subsection unless the
10 claimant includes with the claimant's return evidence that the rehabilitation was
11 approved recommended by the state historic preservation officer for approval by the
12 secretary of the interior under 36 CFR 67.6 before the physical work of construction,
13 or destruction in preparation for construction, began and that the rehabilitation was
14 approved by the secretary of the interior under 36 CFR 67.6.

15 **SECTION 7.** 71.28 (6) (cm) of the statutes is created to read:

16 71.28 (6) (cm) Any credit claimed under this subsection for Wisconsin purposes
17 shall be claimed at the same time as for federal purposes.

18 **SECTION 8.** 71.28 (6) (f) of the statutes is amended to read:

19 71.28 (6) (f) A partnership, limited liability company, or tax-option corporation
20 may not claim the credit under this section subsection. The individual partners of
21 a partnership, members of a limited liability company, or shareholders in a
22 tax-option corporation may claim the credit under this subsection based on eligible
23 costs incurred by the partnership, limited liability company, or tax-option
24 corporation, ~~in proportion to the ownership interest of each partner, member or~~
25 shareholder. The partnership, limited liability company, or tax-option corporation

BILL

1 shall calculate the amount of the credit which may be claimed by each partner,
2 member, or shareholder and shall provide that information to the partner, member,
3 or shareholder. For shareholders of a tax-option corporation, the credit may be
4 allocated in proportion to the ownership interest of each shareholder. Credits
5 computed by a partnership or limited liability company shall be allocated to partners
6 or members as provided in a written agreement among the partners or members that
7 is entered into no later than the last day of the taxable year of the partnership or
8 limited liability company, for which the credit is claimed. Any partner or member
9 who claims the credit as provided under this paragraph shall attach a copy of the
10 agreement to the tax return on which the credit is claimed. A person claiming the
11 credit as provided under this paragraph is solely responsible for any tax liability
12 arising from a dispute with the department of revenue related to claiming the credit.

13 **SECTION 9.** 71.28 (6) (g) of the statutes is created to read:

14 71.28 (6) (g) 1. If a person who claims the credit under this subsection elects
15 to claim the credit based on claiming amounts for expenditures as the expenditures
16 are paid, rather than when the rehabilitation work is completed, the person shall file
17 an election form with the department, in the manner prescribed by the department.

18 2. Notwithstanding s. 71.77, the department may adjust or disallow the credit
19 claimed under this subsection within 4 years after the date that the state historical
20 society notifies the department that the expenditures for which the credit was
21 claimed do not comply with the standards for certification promulgated under s.
22 44.02 (24).

23 **SECTION 10.** 71.47 (6) (c) of the statutes is amended to read:

24 71.47 (6) (c) No person may claim the credit under this subsection unless the
25 claimant includes with the claimant's return evidence that the rehabilitation was

BILL**SECTION 10**

1 approved recommended by the state historic preservation officer for approval by the
2 secretary of the interior under 36 CFR 67.6 before the physical work of construction,
3 or destruction in preparation for construction, began and that the rehabilitation was
4 approved by the secretary of the interior under 36 CFR 67.6.

5 **SECTION 11.** 71.47 (6) (cm) of the statutes is created to read:

6 71.47 (6) (cm) Any credit claimed under this subsection for Wisconsin purposes
7 shall be claimed at the same time as for federal purposes.

8 **SECTION 12.** 71.47 (6) (f) of the statutes is amended to read:

9 71.47 (6) (f) A partnership, limited liability company, or tax-option corporation
10 may not claim the credit under this subsection. The individual partners of a
11 partnership, members of a limited liability company, or shareholders in a tax-option
12 corporation may claim the credit under this subsection based on eligible costs
13 incurred by the partnership, limited liability company, or tax-option corporation, in
14 proportion to the ownership interest of each partner, member or shareholder. The
15 partnership, limited liability company, or tax-option corporation shall calculate the
16 amount of the credit which may be claimed by each partner, member, or shareholder
17 and shall provide that information to the partner, member, or shareholder. For
18 shareholders of a tax-option corporation, the credit may be allocated in proportion
19 to the ownership interest of each shareholder. Credits computed by a partnership
20 or limited liability company shall be allocated to partners or members as provided
21 in a written agreement among the partners or members that is entered into no later
22 than the last day of the taxable year of the partnership or limited liability company,
23 for which the credit is claimed. Any partner or member who claims the credit as
24 provided under this paragraph shall attach a copy of the agreement to the tax return
25 on which the credit is claimed. A person claiming the credit as provided under this

BILL

paragraph is solely responsible for any tax liability arising from a dispute with the department of revenue related to claiming the credit.

SECTION 13. 71.47 (6) (g) of the statutes is created to read:

71.47 **(6)** (g) 1. If a person who claims the credit under this subsection elects to claim the credit based on claiming amounts for expenditures as the expenditures are paid, rather than when the rehabilitation work is completed, the person shall file an election form with the department, in the manner prescribed by the department.

2. Notwithstanding s. 71.77, the department may adjust or disallow the credit claimed under this subsection within 4 years after the date that the state historical society notifies the department that the expenditures for which the credit was claimed do not comply with the standards for certification promulgated under s. 44.02 (24).

SECTION 14. Initial applicability.

(1) SUPPLEMENT TO FEDERAL HISTORIC REHABILITATION CREDIT. ~~This act~~ first applies to property placed in service on or after June 30, 2008.

(END)

The treatment of sections 44.02(24), 71.07(9m)(c), (cm), (f), and (g), 71.28(6)(c), (cm), (f), and (g), and 71.47(6)(c), (cm), (f), and (g) of the statutes

Change
component

2009-11 LRB Draft Review

Date: January 13, 2009

LRB Number: 1462/1 (Historic Rehabilitation Tax Credits)

Reviewed by: Marcy Stock, Wendy Miller

Brief Description of LRB Draft:

Under this bill, a person may claim the state income and franchise tax credit for rehabilitating an income-producing historic building if the person includes with the tax return evidence that the state historic preservation officer recommended the rehabilitation work for approval by the Secretary of the Interior before the rehabilitation work began and that the rehabilitation was approved by the Secretary of the Interior.

The credit shall be claimed at the same time as for federal purposes.

In addition, a partner or member of an LLC is allocated a portion of the credit in a manner specified in an agreement with the other partners or members.

Comments on Draft:

Accomplishes intent but changes needed.

Changes Needed & Why:

Sections 71.07(9m)(f), 71.28(6)(f), and 71.47(6)(f) provide that "Credits computed by a partnership or limited liability company shall be allocated to partners or members as provided in a written agreement among the partners or members that is entered into no later than the last day of the taxable year of the partnership or limited liability company, for which the credit is claimed." Because the word "shall" is used, it appears that a partnership or LLC will always be required to have a written agreement, even if the credit is allocated in proportion to the ownership interest. This could be changed to read "Credits computed by a partnership or limited liability may be allocated to their partners or members in proportion to their ownership interest or may be allocated to partners or members as provided in a written agreement . . ."

This would also require changes to the next sentence so that it would read "Any partner or member who claims the credit as provided under this paragraph, ~~for which the credit is claimed~~ shall attach a copy of the agreement, if applicable, to the tax return on which the credit is claimed."

One additional minor change is necessary. On page 4, line 23, the first word, "shareholder" should be stricken so that the sentence reads (beginning on line 18. "The partners of a partnership, members of a limited liability company, or shareholders in a tax-option corporation may claim the credit under this subsection based on eligible costs incurred by the partnership, limited liability company, or tax-option corporation, ~~in proportion to the ownership interest of each partner, member, or shareholder.~~"



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1462/1

JK:nwn&cjs:ph

stays

RM R

DOA:.....Lillethun, BB0346 - Historic rehabilitation tax credits

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1-15-09

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1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

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Under this bill, a person may claim the state income and franchise tax credit for rehabilitating an income-producing historic building if the person includes with the person's tax return evidence that the state historic preservation officer recommended the rehabilitation work for approval by the secretary of the interior before the rehabilitation work began and that the rehabilitation was approved by the secretary of the interior.

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For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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3 certify, and shall certify, expenditures for preservation or rehabilitation of historic
4 property for the purposes of s. ss. 71.07 (9m) and (9r), 71.28 (6), and 71.47 (6). These
5 standards shall be substantially similar to the standards used by the secretary of the
6 interior to certify rehabilitations under 26 USC 47 (c) (2).

7 **SECTION 2.** 71.07 (9m) (c) of the statutes is amended to read:

8 71.07 (9m) (c) No person may claim the credit under this subsection unless the
9 claimant includes with the claimant's return evidence that the rehabilitation was
10 approved recommended by the state historic preservation officer for approval by the
11 secretary of the interior under 36 CFR 67.6 before the physical work of construction,
12 or destruction in preparation for construction, began and that the rehabilitation was
13 approved by the secretary of the interior under 36 CFR 67.6.

14 **SECTION 3.** 71.07 (9m) (cm) of the statutes is created to read:

15 71.07 (9m) (cm) Any credit claimed under this subsection for Wisconsin
16 purposes shall be claimed at the same time as for federal purposes.

17 **SECTION 4.** 71.07 (9m) (f) of the statutes is amended to read:

claimed in proportion to the ownership interests
of the partners or members or

71.07 (9m) (f) A partnership, limited liability company, or tax-option corporation may not claim the credit under this subsection. The individual partners of a partnership, members in of a limited liability company, or shareholders in a tax-option corporation may claim the credit under this subsection based on eligible costs incurred by the partnership, company, or tax-option corporation, in proportion to the ownership interest of each partner, member or shareholder. The partnership, limited liability company, or tax-option corporation shall calculate the amount of the credit which may be claimed by each partner, member, or shareholder and shall provide that information to the partner, member, or shareholder. For shareholders of a tax-option corporation, the credit may be allocated in proportion to the ownership interest of each shareholder. Credits computed by a partnership or limited liability company ^{may} shall be allocated to partners or members as provided in a written agreement among the partners or members that is entered into no later than the last day of the taxable year of the partnership or limited liability company, for which the credit is claimed. Any partner or member who claims the credit as provided under this paragraph, for which the credit is claimed shall attach a copy of the agreement to the tax return on which the credit is claimed. A person claiming the credit as provided under this paragraph ^{is not applicable} is solely responsible for any tax liability arising from a dispute with the department of revenue related to claiming the credit.

SECTION 5. 71.07 (9m) (g) of the statutes is created to read:

71.07 (9m) (g) 1. If a person who claims the credit under this subsection elects to claim the credit based on claiming amounts for expenditures as the expenditures are paid, rather than when the rehabilitation work is completed, the person shall file an election form with the department, in the manner prescribed by the department.

1 2. Notwithstanding s. 71.77, the department may adjust or disallow the credit
2 claimed under this subsection within 4 years after the date that the state historical
3 society notifies the department that the expenditures for which the credit was
4 claimed do not comply with the standards for certification promulgated under s.
5 44.02 (24).

6 **SECTION 6.** 71.28 (6) (c) of the statutes is amended to read:

7 71.28 (6) (c) No person may claim the credit under this subsection unless the
8 claimant includes with the claimant's return evidence that the rehabilitation was
9 approved recommended by the state historic preservation officer for approval by the
10 secretary of the interior under 36 CFR 67.6 before the physical work of construction,
11 or destruction in preparation for construction, began and that the rehabilitation was
12 approved by the secretary of the interior under 36 CFR 67.6.

13 **SECTION 7.** 71.28 (6) (cm) of the statutes is created to read:

14 71.28 (6) (cm) Any credit claimed under this subsection for Wisconsin purposes
15 shall be claimed at the same time as for federal purposes.

16 **SECTION 8.** 71.28 (6) (f) of the statutes is amended to read:

17 71.28 (6) (f) A partnership, limited liability company, or tax-option corporation
18 may not claim the credit under this section subsection. The individual partners of
19 a partnership, members of a limited liability company, or shareholders in a
20 tax-option corporation may claim the credit under this subsection based on eligible
21 costs incurred by the partnership, limited liability company, or tax-option
22 corporation, ~~in proportion to the ownership interest of each partner, member or~~
23 ~~shareholder~~. The partnership, limited liability company, or tax-option corporation
24 shall calculate the amount of the credit which may be claimed by each partner,
25 member, or shareholder and shall provide that information to the partner, member,

*claimed in proportion to the ownership interests of
the partners or members or*

1 or shareholder. For shareholders of a tax-option corporation, the credit may be
2 allocated in proportion to the ownership interest of each shareholder. Credits
3 computed by a partnership or limited liability company ^{may} shall be allocated to partners
4 or members as provided in a written agreement among the partners or members that
5 is entered into no later than the last day of the taxable year of the partnership or
6 limited liability company, for which the credit is claimed. Any partner or member
7 who claims the credit as provided under this paragraph shall attach a copy of the
8 agreement to the tax return on which the credit is claimed. A person claiming the
9 credit as provided under this paragraph is solely responsible for any tax liability
10 arising from a dispute with the department of revenue related to claiming the credit.

11 **SECTION 9.** 71.28 (6) (g) of the statutes is created to read:

12 71.28 (6) (g) 1. If a person who claims the credit under this subsection elects
13 to claim the credit based on claiming amounts for expenditures as the expenditures
14 are paid, rather than when the rehabilitation work is completed, the person shall file
15 an election form with the department, in the manner prescribed by the department.

16 2. Notwithstanding s. 71.77, the department may adjust or disallow the credit
17 claimed under this subsection within 4 years after the date that the state historical
18 society notifies the department that the expenditures for which the credit was
19 claimed do not comply with the standards for certification promulgated under s.
20 44.02 (24).

21 **SECTION 10.** 71.47 (6) (c) of the statutes is amended to read:

22 71.47 (6) (c) No person may claim the credit under this subsection unless the
23 claimant includes with the claimant's return evidence that the rehabilitation was
24 approved recommended by the state historic preservation officer for approval by the
25 secretary of the interior under 36 CFR 67.6 before the physical work of construction,

1 or destruction in preparation for construction, began and that the rehabilitation was
2 approved by the secretary of the interior under 36 CFR 67.6.

3 **SECTION 11.** 71.47 (6) (cm) of the statutes is created to read:

4 71.47 (6) (cm) Any credit claimed under this subsection for Wisconsin purposes
5 shall be claimed at the same time as for federal purposes.

6 **SECTION 12.** 71.47 (6) (f) of the statutes is amended to read:

7 71.47 (6) (f) A partnership, limited liability company, or tax-option corporation
8 may not claim the credit under this subsection. The individual partners of a
9 partnership, members of a limited liability company, or shareholders in a tax-option
10 corporation may claim the credit under this subsection based on eligible costs
11 incurred by the partnership, limited liability company, or tax-option corporation, ~~in~~
12 proportion to the ownership interest of each partner, member or shareholder. The
13 partnership, limited liability company, or tax-option corporation shall calculate the
14 amount of the credit which may be claimed by each partner, member, or shareholder
15 and shall provide that information to the partner, member, or shareholder. For
16 shareholders of a tax-option corporation, the credit may be allocated in proportion
17 to the ownership interest of each shareholder. Credits computed by a partnership
18 or limited liability company ^{may} shall be allocated to partners or members as provided
19 in a written agreement among the partners or members that is entered into no later
20 than the last day of the taxable year of the partnership or limited liability company,
21 for which the credit is claimed. Any partner or member who claims the credit as
22 provided under this paragraph shall attach a copy of the agreement to the tax return
23 on which the credit is claimed. A person claiming the credit as provided under this
24 paragraph is solely responsible for any tax liability arising from a dispute with the
25 department of revenue related to claiming the credit.

if applicable

claimed in proportion to the
ownership interests of the partner or member
or

SECTION 13. 71.47 (6) (g) of the statutes is created to read:

71.47 (6) (g) 1. If a person who claims the credit under this subsection elects to claim the credit based on claiming amounts for expenditures as the expenditures are paid, rather than when the rehabilitation work is completed, the person shall file an election form with the department, in the manner prescribed by the department.

2. Notwithstanding s. 71.77, the department may adjust or disallow the credit claimed under this subsection within 4 years after the date that the state historical society notifies the department that the expenditures for which the credit was claimed do not comply with the standards for certification promulgated under s. 44.02 (24).

SECTION 9343. Initial applicability; Revenue.

(1) SUPPLEMENT TO FEDERAL HISTORIC REHABILITATION CREDIT. The treatment of sections 44.02 (24), 71.07 (9m) (c), (cm), (f), and (g), 71.28 (6) (c), (cm), (f), and (g), and 71.47 (6) (c), (cm), (f), and (g) of the statutes first applies to property placed in service on or after June 30, 2008.

(END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1462/2
JK:nwn&cjs:ph

3
RMK

DOA:.....Lillethun, BB0346 - Historic rehabilitation tax credits

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 2-2-09

don't gen.

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, a person who owns an income-producing historic building may claim a federal income tax credit that is equal to 20 percent of certain costs to rehabilitate the historic building. To claim the credit, the building must be listed, or be eligible for listing, on the national register of historic places or located in certain national, state, or local historic districts, and the rehabilitation work must comply with standards established by the secretary of the interior.

Under current law, a person who may claim the federal income tax credit for rehabilitating an income-producing historic building may also claim a state income tax or franchise tax credit that is equal to 5 percent of certain costs to rehabilitate the historic building. To claim the credit, the person must include with the person's tax return evidence that the secretary of the interior approved the rehabilitation work before the rehabilitation work began.

Under this bill, a person may claim the state income and franchise tax credit for rehabilitating an income-producing historic building if the person includes with the person's tax return evidence that the state historic preservation officer recommended the rehabilitation work for approval by the secretary of the interior before the rehabilitation work began and that the rehabilitation was approved by the secretary of the interior.

Under current law, each partner in a partnership or member of a limited liability company is allocated a portion of any tax credit that the partnership or limited liability company may claim, including the credit for rehabilitating a historic building, based on each partner's or member's ownership interest. Under this bill, a partner or member may be allocated a portion of the tax credit for rehabilitating a historic building in a manner specified in an agreement with the other partners or members.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 44.02 (24) of the statutes is amended to read:

2 44.02 (24) Promulgate by rule procedures, standards and forms necessary to
3 certify, and shall certify, expenditures for preservation or rehabilitation of historic
4 property for the purposes of ~~s. ss.~~ 71.07 (9m) and (9r), 71.28 (6), and 71.47 (6). These
5 standards shall be substantially similar to the standards used by the secretary of the
6 interior to certify rehabilitations under 26 USC 47 (c) (2).

7 **SECTION 2.** 71.07 (9m) (c) of the statutes is amended to read:

8 71.07 (9m) (c) No person may claim the credit under this subsection unless the
9 claimant includes with the claimant's return evidence that the rehabilitation was
10 approved recommended by the state historic preservation officer for approval by the
11 secretary of the interior under 36 CFR 67.6 before the physical work of construction,
12 or destruction in preparation for construction, began and that the rehabilitation was
13 approved by the secretary of the interior under 36 CFR 67.6.

14 **SECTION 3.** 71.07 (9m) (cm) of the statutes is created to read:

15 71.07 (9m) (cm) Any credit claimed under this subsection for Wisconsin
16 purposes shall be claimed at the same time as for federal purposes.

17 **SECTION 4.** 71.07 (9m) (f) of the statutes is amended to read:

1 71.07 (9m) (f) A partnership, limited liability company, or tax-option
2 corporation may not claim the credit under this subsection. The individual partners
3 of a partnership, members ~~in~~ of a limited liability company, or shareholders in a
4 tax-option corporation may claim the credit under this subsection based on eligible
5 costs incurred by the partnership, company, or tax-option corporation, ~~in proportion~~
6 ~~to the ownership interest of each partner, member or shareholder.~~ The partnership,
7 limited liability company, or tax-option corporation shall calculate the amount of the
8 credit which may be claimed by each partner, member, or shareholder and shall
9 provide that information to the partner, member, or shareholder. For shareholders
10 of a tax-option corporation, the credit may be allocated in proportion to the
11 ownership interest of each shareholder. Credits computed by a partnership or
12 limited liability company may be claimed in proportion to the ownership interests
13 of the partners or members or allocated to partners or members as provided in a
14 written agreement among the partners or members that is entered into no later than
15 the last day of the taxable year of the partnership or limited liability company, for
16 which the credit is claimed. Any partner or member who claims the credit as
17 provided under this paragraph shall attach a copy of the agreement, if applicable, to
18 the tax return on which the credit is claimed. A person claiming the credit as
19 provided under this paragraph is solely responsible for any tax liability arising from
20 a dispute with the department of revenue related to claiming the credit.

21 **SECTION 5.** 71.07 (9m) (g) of the statutes is created to read:

22 71.07 (9m) (g) 1. If a person who claims the credit under this subsection elects
23 to claim the credit based on claiming amounts for expenditures as the expenditures
24 are paid, rather than when the rehabilitation work is completed, the person shall file
25 an election form with the department, in the manner prescribed by the department.

1 2. Notwithstanding s. 71.77, the department may adjust or disallow the credit
2 claimed under this subsection within 4 years after the date that the state historical
3 society notifies the department that the expenditures for which the credit was
4 claimed do not comply with the standards for certification promulgated under s.
5 44.02 (24).

6 **SECTION 6.** 71.28 (6) (c) of the statutes is amended to read:

7 71.28 (6) (c) No person may claim the credit under this subsection unless the
8 claimant includes with the claimant's return evidence that the rehabilitation was
9 approved recommended by the state historic preservation officer for approval by the
10 secretary of the interior under 36 CFR 67.6 before the physical work of construction,
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12 approved by the secretary of the interior under 36 CFR 67.6.

13 **SECTION 7.** 71.28 (6) (cm) of the statutes is created to read:

14 71.28 (6) (cm) Any credit claimed under this subsection for Wisconsin purposes
15 shall be claimed at the same time as for federal purposes.

16 **SECTION 8.** 71.28 (6) (f) of the statutes is amended to read:

17 71.28 (6) (f) A partnership, limited liability company, or tax-option corporation
18 may not claim the credit under this section subsection. The individual partners of
19 a partnership, members of a limited liability company, or shareholders in a
20 tax-option corporation may claim the credit under this subsection based on eligible
21 costs incurred by the partnership, limited liability company, or tax-option
22 corporation, ~~in proportion to the ownership interest of each partner, member or~~
23 ~~shareholder~~. The partnership, limited liability company, or tax-option corporation
24 shall calculate the amount of the credit which may be claimed by each partner,
25 member, or shareholder and shall provide that information to the partner, member,

1 or shareholder. For shareholders of a tax-option corporation, the credit may be
2 allocated in proportion to the ownership interest of each shareholder. Credits
3 computed by a partnership or limited liability company may be claimed in proportion
4 to the ownership interests of the partners or members or allocated to partners or
5 members as provided in a written agreement among the partners or members that
6 is entered into no later than the last day of the taxable year of the partnership or
7 limited liability company, for which the credit is claimed. Any partner or member
8 who claims the credit as provided under this paragraph shall attach a copy of the
9 agreement, if applicable, to the tax return on which the credit is claimed. A person
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11 liability arising from a dispute with the department of revenue related to claiming
12 the credit.

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14 71.28 (6) (g) 1. If a person who claims the credit under this subsection elects
15 to claim the credit based on claiming amounts for expenditures as the expenditures
16 are paid, rather than when the rehabilitation work is completed, the person shall file
17 an election form with the department, in the manner prescribed by the department.

18 2. Notwithstanding s. 71.77, the department may adjust or disallow the credit
19 claimed under this subsection within 4 years after the date that the state historical
20 society notifies the department that the expenditures for which the credit was
21 claimed do not comply with the standards for certification promulgated under s.
22 44.02 (24).

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24 71.47 (6) (c) No person may claim the credit under this subsection unless the
25 claimant includes with the claimant's return evidence that the rehabilitation was

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2 secretary of the interior under 36 CFR 67.6 before the physical work of construction,
3 or destruction in preparation for construction, began and that the rehabilitation was
4 approved by the secretary of the interior under 36 CFR 67.6.

5 **SECTION 11.** 71.47 (6) (cm) of the statutes is created to read:

6 71.47 (6) (cm) Any credit claimed under this subsection for Wisconsin purposes
7 shall be claimed at the same time as for federal purposes.

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10 may not claim the credit under this subsection. The individual partners of a
11 partnership, members of a limited liability company, or shareholders in a tax-option
12 corporation may claim the credit under this subsection based on eligible costs
13 incurred by the partnership, limited liability company, or tax-option corporation, in
14 proportion to the ownership interest of each partner, member or shareholder. The
15 partnership, limited liability company, or tax-option corporation shall calculate the
16 amount of the credit which may be claimed by each partner, member, or shareholder
17 and shall provide that information to the partner, member, or shareholder. For
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19 to the ownership interest of each shareholder. Credits computed by a partnership
20 or limited liability company may be claimed in proportion to the ownership interests
21 of the partners or members or allocated to partners or members as provided in a
22 written agreement among the partners or members that is entered into no later than
23 the last day of the taxable year of the partnership or limited liability company, for
24 which the credit is claimed. Any partner or member who claims the credit as
25 provided under this paragraph shall attach a copy of the agreement, if applicable, to

INSERT
A

1 the tax return on which the credit is claimed. A person claiming the credit as
2 provided under this paragraph is solely responsible for any tax liability arising from
3 a dispute with the department of revenue related to claiming the credit.

4 **SECTION 13.** 71.47 (6) (g) of the statutes is created to read:

5 71.47 (6) (g) 1. If a person who claims the credit under this subsection elects
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8 an election form with the department, in the manner prescribed by the department.

9 2. Notwithstanding s. 71.77, the department may adjust or disallow the credit
10 claimed under this subsection within 4 years after the date that the state historical
11 society notifies the department that the expenditures for which the credit was
12 claimed do not comply with the standards for certification promulgated under s.
13 44.02 (24).

14 **SECTION 9343. Initial applicability; Revenue.**

15 (1) SUPPLEMENT TO FEDERAL HISTORIC REHABILITATION CREDIT. The treatment of
16 sections 44.02 (24), 71.07 (9m) (c), (cm), (f), and (g), 71.28 (6) (c), (cm), (f), and (g), and
17 71.47 (6) (c), (cm), (f), and (g) of the statutes first applies to property placed in service
18 on or after June 30, 2008.

19 (END)

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1462/3ins
JK:wnw&cjs:ph

Insert A

ms 97
1 For a partnership or limited liability company that places property in service
2 after June 29, 2008, and before January 1, 2009, the credit attributable to such
3 property may be allocated, at the election of the partnership or limited liability
4 company, to partners or members for a taxable year of the partnership or limited
5 liability company that ends after June 29, 2008, and before January 1, 2009.

Kreye, Joseph

From: Grinde, Kirsten - DOA [kirsten.grinde@wisconsin.gov]
Sent: Monday, February 02, 2009 1:15 PM
To: Kreye, Joseph
Cc: Hanaman, Cathlene; Kraus, Jennifer - DOA; Lillethun, Chad W - DOA
Subject: LRB 09-1462/2
Importance: High

Joe,

One additional change has been requested to the historic rehabilitation tax credit draft.

Please add language that will accomplish the following:

For a partnership or limited liability company that places property in service on or between June 30, 2008, and December 31, 2008, the credit attributable to such property may be allocated to partners or members for a taxable year of the partnership or limited liability company ending on or between June 30, 2008, and December 31, 2009, at the election of the partnership or limited liability company.

Please let us know if you have any questions.

Thanks,

Kirsten

02/02/2009

Kreye, Joseph

From: Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]
Sent: Monday, February 02, 2009 3:50 PM
To: Kreye, Joseph
Cc: Grinde, Kirsten - DOA; Kraus, Jennifer - DOA; Hanaman, Cathlene
Subject: FW: LRB Draft: 09-1462/3 Historic rehabilitation tax credits

Joe - FYI concerning one more correction here. See below.

From: Templeton, Carrie E - DOR
Sent: Monday, February 02, 2009 3:46 PM
To: Grinde, Kirsten - DOA; Lillethun, Chad W - DOA
Cc: Wink, Wendy L - DOR
Subject: FW: LRB Draft: 09-1462/3 Historic rehabilitation tax credits

FYI on the below—one more draft?? Thanks
Carrie

Carrie Templeton
Wisconsin Department of Revenue
(608) 266-6466
carrie.templeton@revenue.wi.gov

****Important Confidentiality Notice****

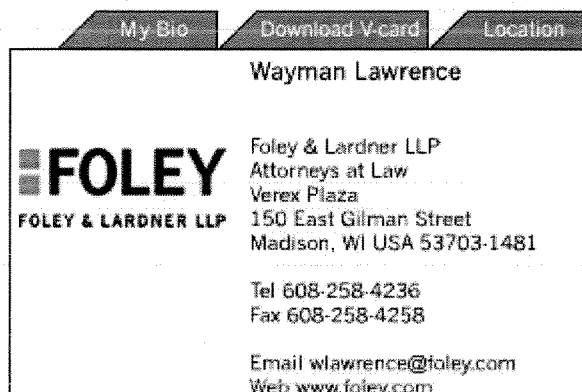
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From: Lawrence IV, Wayman C. [mailto:WLawrence@foley.com]
Sent: Monday, February 02, 2009 3:29 PM
To: Templeton, Carrie E - DOR; aoc@dewittross.com; Tim Sherry; ggorman@gormanusa.com
Subject: RE: LRB Draft: 09-1462/3 Historic rehabilitation tax credits

thanks, but the words "before January 1,2009" in the new sentence needs to be "before January 1, 2010"—otherwise the modification of what I submitted at noon is fine. By saying January 1,2009 instead of 2010, the whole purpose of the sentence I provided is negated. I think whoever drafted this would agree. Hopefully, it is just an error.

02/02/2009



From: Templeton, Carrie E - DOR [mailto:Carrie.Templeton@revenue.wi.gov]
Sent: Monday, February 02, 2009 3:15 PM
To: Alice O'Connor (aoc@dewittross.com); Tim Sherry; ggorman@gormanusa.com; Lawrence IV, Wayman C.
Subject: FW: LRB Draft: 09-1462/3 Historic rehabilitation tax credits

FYI—Attached is the latest draft of the historic rehabilitation tax credit proposal. I do not anticipate any additional changes to be made. Thank you for your quick review of the proposal and suggested language you provided today.
Carrie

Carrie Templeton
Wisconsin Department of Revenue
(608) 266-6466
carrie.templeton@revenue.wi.gov

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